

**LML4803
LML403Q**

May/June 2011

ADVANCED LABOUR LAW (LLB)

Duration . 2 Hours

100 Marks

EXAMINERS :
FIRST .
SECOND .
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This paper consists of 2 pages.

QUESTION 1

In each of the following cases, define the terms concerned and highlight the differences between them.

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| i) Substantive and procedural fairness | (4) |
| ii) Negotiation and consultation | (4) |
| iii) Affirmative action and employment equity | (4) |
| iv) Operational requirements and inherent job requirements | (4) |
| v) Closed shop and agency shop | (4) |
| vi) Bargaining council and statutory council | (4) |
| vii) Dispute of right and dispute of interest | (4) |
| viii) Direct and indirect discrimination | (4) |
| ix) Fair discrimination and unfair discrimination | (4) |
| x) Strikes and protest action | (4) |
| xi) Incompetence and incapacity | (4) |
| xii) Adjudication, mediation and arbitration | (6) |

[50]

QUESTION 2

Critically evaluate the scope and application of the law on unfair labour practices in terms of section 186(2) of the Labour Relations Act 66 of 1995 (LRA) and in terms of the Constitution of the Republic of South Africa, 1996. In your answer, include a discussion of the various forms of unfair labour practice in terms of the LRA.

[15]

QUESTION 3

Answer the following question with reference to the applicable legislation and case law.

A was employed by B (Pty) Ltd as an operations manager. In July 2010 A suffered from a bout of severe depression owing to the tragic death of his son in a motor vehicle accident. As a result of this he was unable to perform his duties to his usual standard, which led to his direct superior, C, bullying and badgering him both physically and verbally. On one occasion C pushed A against the wall so hard that he fell. On several other occasions C warned A that if he (A) did not "get his act together", he, C, would give him good reason "to go to hospital".

Advise A as to any bases of claim he may have against the employer. (Please note: there are more than one possible causes of action or bases on which A may sue the employer.) In each instance, discuss the onus of proof of the parties, the possible remedies available to A, and the applicable dispute resolution procedure. [20]

QUESTION 4

On 13 September 2010 Trade Union B embarked on an unprotected strike. On 14 September the employer issued an ultimatum stating that if the employees did not return to work within one hour, they would be dismissed. About half of the employees returned to work within the next two hours. The employees who did not return to work were informed the following day that they had been dismissed.

- i) Discuss, with reference to case law and legislation, what the employer should have done to ensure that the dismissals were procedurally fair. (12)
 - ii) Since the strike was unprotected, what action could the employer have taken (apart from dismissal) to ameliorate its situation? (3)
- [15]**

TOTAL: [100]